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16 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

17 IN AND FOR THE COUNTY OF YAVAPAI

18 STATE OF ARIZONA

19 Plaintiff,

20 vs.

21 STEVEN CARROLL DEMOCKER,

22 Defendant.

23 No. CR 2008-1339

24 Division 6

25 **DEFENDANT'S OBJECTION TO
REQUEST FOR CAMERAS IN
COURTROOM**

26 (Hearing Requested)

27 Pursuant to this Court's Order of January 6, 2009, Defendant Steven DeMocker
28 hereby objects to the request for cameras in the courtroom made by ABC News, and
requests that a hearing be set on these objections, pursuant to Rule 122 (as amended),
Rules of the Supreme Court. This Objection is supported by the following
Memorandum and Points of Authorities.¹

MEMORANDUM OF POINTS AND AUTHORITIES

¹ Counsel reserves the right to raise future objections as these are novel legal issues and counsel has been given less than twenty-four hours to respond to ABC's request.

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OVERVIEW

Until seven (7) days ago, the decision whether to allow cameras in the courtroom was within the sole discretion of the trial judge, and was not subject to appellate review. However, amendments to Rule 122 that only went into effect on January 1, 2009 now require the judge to make “specific, on-the-record findings that there is a likelihood of harm arising from one or more of the above factors that outweighs the benefit to the public of camera coverage.” Rule 122(c), as amended.

While ABC claims in its letter that this “case touches on social and legal issues of significant news value” this is a capital case arising in a small town involving a well-known victim and a prominent Defendant. This case has already spawned lurid and highly inflammatory pre-trial publicity, examples of which will be presented to the Court at the hearing on this Objection. Defendant believes that the presence of cameras in the courtroom at the next hearing on January 13, 2009 and at future proceedings, under all of the circumstances, would further deprive him of his right to a fair trial secured by the Sixth Amendment to the United States Constitution, and to due process of law secured by the Fifth and Fourteenth Amendments to the United States Constitution and by Article 2, Section 4 of the Arizona Constitution, as more fully set forth in this Objection.

THE LAW

Rule 122 of the Rules of the Supreme Court, as amended, provides that cameras may be permitted in a courtroom only after the trial judge considers the following factors:

- (i) The impact of coverage upon the right of any party to a fair trial;
- (ii) The impact of coverage upon the right of privacy of any party or witness;
- (iii) The impact of coverage upon the safety and well-being of any party, witness or

1 juror;

2 (iv) The likelihood that coverage would distract participants or would detract from the
3 dignity of the proceedings;

4 (v) The adequacy of the physical facilities of the court for coverage; and

5 (vi) The timeliness of the request pursuant to subsection (f) of this Rule; and

6 (vii) Any other factor affecting the fair administration of justice. Rule 122(b).
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8 ARGUMENT

9 At issue, Defendant believes, is the degree to which the visual depiction of these
10 proceedings and their subsequent nationwide dissemination by ABC News will further
11 taint the pool of potential jurors beyond the damage already done by the print media. At
12 the hearing on this Objection, Defendant will offer specific examples of actual visual
13 prejudice created by the presence of cameras in other high-profile cases in Arizona and
14 elsewhere, and the various ways in which other judges tried under the old rule to
15 mitigate the prejudicial effect on the defendant caused by such circumstances. *See* ER
16 3.6(c), Rules of Professional Conduct (“a lawyer may make a statement that a
17 reasonable lawyer would believe is required to protect a client from the substantial
18 undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's
19 client. A statement made pursuant to this paragraph shall be limited to such information
20 as is necessary to mitigate the recent adverse publicity”). When the trial court believes
21 such prejudice may occur by reason of the presence of cameras in the courtroom, it is
22 incumbent on the judge to exercise his discretion in favor of the fundamental rights of
23 the defendant to a fair trial rather than the desire of the media for a good story. This
24 Court will be breaking new ground in deciding this matter because of the recent
25 amendments; however, the basic premise that the right to a fair trial trumps all other
26 considerations remains unchanged. The likelihood of harm, Defendant submits, will be
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1 Court must find a way to do justice first. Defendant respectfully suggests that,
2 while cameras have their place in court, the circumstances of this case and the
3 widespread public attention it has already generated make it clear that the sort of
4 camera coverage proposed by ABC will only do more damage to his right to a
5 fair trial by an impartial jury.

6 DATED this 7th day of January, 2009.

7
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18 ORIGINAL of the foregoing filed
19 this 7th day of January, 2009, with:

20 Jeanne Hicks,
21 Clerk of the Court
22 Yavapai County Superior Court
23 Prescott, AZ

24 COPIES of the foregoing hand delivered
25 this 7th day of January, 2009, to:

26 The Hon. Thomas B. Lindberg
27 Judge of the Superior Court
28 Division Six
Prescott, AZ

Mark K. Ainley, Esq.
Office of the Yavapai County Attorney
Prescott, AZ

